

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN**

**Tawanda Hall, Carolyn Miller,
American Internet Group, LLC,
Anthony Akande, Curtis Lee and Coretha Lee,
Marcus Byers and Kristina Govan,**
Individually, and all those similarly situated
in the City of Southfield
Plaintiffs,

V

**Case No. 20-cv-12230-PDB-EAS
Hon. Paul D. Borman**

Oakland County et al.

MOTION FOR LEAVE TO FILE SUPPLEMENTAL AUTHORITY

NOW COMES Plaintiff by and through its Co-Counsel McAlpine P.C. and
Smith Law Group, PLLC and for its Motion states as follows:

1. On October 13, 2022, the United States Court of Appeals for the Sixth Circuit reversed and remanded the dismissal as to the takings claim under the U.S. Constitution against Oakland County.
2. Oakland County Petitioned for Rehearing and En Banc Review which was denied with not a single 6th Circuit Judge requesting a vote.
3. On January 12, 2023, the 6th Circuit issued its mandate.
4. On January 20, 2023, Defendant Oakland County filed a Motion to Stay this case.

5. On January 20, 2023, Defendant Oakland County filed a motion to Stay.
6. Oakland County in two other similar cases also filed an almost identical Motion for a Stay.
7. On February 9, 2023, in one of those cases Taylor v. Oakland County 4:19-Cv- 12548, Judge Lawson entered an Order Denying Defendants' Motion to Stay. Plaintiffs believe the reasoning in the Order is persuasive and in the interest of conformity this Court should consider such Order in deciding the Motion to Stay in the instant matter.
8. Pursuant to Local Rule 7.1 that there was a conference between attorneys for Oakland County and Plaintiffs' Counsel specifically identified the nature of the motion and even the specific Exhibit sought to be brought to this Court's attention but did not obtain concurrence in the relief sought because in order to stipulate Oakland County required Plaintiffs to stipulate that it could file essentially another brief.

WHEREFORE, the Plaintiff requests this Honorable Court to grant leave to Plaintiff to file the proposed supplemental exhibit.

Respectfully Submitted,

/s/ Scott F. Smith

Scott F. Smith (P28472)
SMITH LAW GROUP, PLLC
30833 Northwestern Hwy, Suite 200
Farmington Hills, MI 48334
(248) 626-1962

/s/ Jayson E. Blake

Jayson E. Blake (P56128)
MCALPINE PC
3201 University Drive, Suite 200
Auburn Hills, MI 48326
(248) 373-3700

Co-Counsel for Plaintiff

Co-Counsel for Plaintiff

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**Case No. 20-cv-12230-PDB-EAS
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**BRIEF IN SUPPORT OF MOTION FOR LEAVE TO FILE
SUPPLEMENTAL EXHIBIT**

STATEMENT OF ISSUES PRESENTED

Should this Court enter an order granting Plaintiff's Motion for leave to file
A supplemental exhibit?

Plaintiffs answer:.....Yes

Defendant answers:..... No

STATEMENT OF CONTROLLING AUTHORITY

Pursuant to E.D. Mich. LR 7.1(d)(2), the controlling or most appropriate authority for the relief sought is:

L.R.7.1(g)(1)(A)

ARGUMENT

Plaintiffs rely on L.R.7.1(g)(1)(A)

For the reasons set forth in the above Motion, Plaintiffs, by and through its undersigned Counsel, requests that the Court grant Plaintiff's Motion for Leave to File Supplemental Exhibit, attached hereto as Exhibit A.

Respectfully Submitted,
/s/ Scott F. Smith (P28472)
Attorney for Plaintiff
30833 Northwestern Hwy., Suite 200
Farmington Hills, MI 48334
(248)626-1962
Smithsf.law@gmail.com

EXHIBIT A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KENNETH TAYLOR,

Plaintiff,

v.

Case Number 19-12548
Honorable David M. Lawson

JANET JACKSON, ANDY MEISER, COUNTY
OF OAKLAND, CITY OF SOUTHFIELD,
FREDERICK ZORN, GERALD WITKOWSKI,
SUE WARD-WITKOWSKI, IRV LOWENBERG,
MICHAEL MANDLEBAUM, DONALD
FRACASSI, DANIEL BRIGHTWELL, MYRON
FRASIER, LLOYD CREWS, NANCY BANKS,
SOUTHFIELD NON-PROFIT HOUSING CORP.,
MITCHELL SIMON, RITA FULGIAM-HILLMAN,
LORA BRANTLEY-GILBERT, EARLENE
TRAYLER-NEAL, SOUTHFIELD
NEIGHBORHOOD REVITALIZATION
INITIATIVE, LLC, ETOILE LIBBETT, HABITAT
FOR HUMANITY, M.S. TITLE AGENCY, LLC,
and KENSON SIVER,

Defendants.

ORDER DENYING DEFENDANTS' MOTION TO STAY

This matter is before the Court on a motion to stay further proceedings in this post-judgment matter filed by defendants Oakland County and Andy Meisner, its treasurer. On November 12, 2020, former United States District Judge Stephanie Dawkins Davis issued an opinion and judgment adopting a report and recommendation and dismissing the complaint without prejudice. One year later, on November 11, 2021, the plaintiff filed a motion to reopen the case and for leave to file an amended complaint. The plaintiffs' motion was based on an intervening change in the law that occurred when the United States Court of Appeals for the Sixth Circuit held in *Hall v. Meisner*, 51 F.4th 185 (6th Cir. 2022), that foreclosure of real property

without providing a procedure for owners to recover excess equity violated the Takings Clause of the Fifth Amendment.

After the case was reassigned to the undersigned, the Court referred the motion to reopen to the assigned magistrate judge to prepare a report and recommendation. On January 23, 2023, Magistrate Judge David R. Grand issued a report recommending that the Court grant the motion to reopen based on the “recent and monumental sea-change” wrought in the governing case law by the Sixth Circuit’s ruling in *Hall*.

On February 3, 2023, the Oakland County defendants filed a motion to stay further proceedings based on their representation that they intend to file a petition for a writ of *certiorari* in the *Hall* matter. The defendants represent that the Supreme Court recently granted *certiorari* in a case from the Eighth Circuit that presents the same legal issue, *see Tyler v. Hennepin County*, No. 22-166, and they assert that a petition in another matter, *Continental Resources v. Fair*, is “on hold” in the Supreme Court pending the Court’s ruling in *Tyler*. The defendants contend that the outcome of the *Tyler* matter will control the disposition of the issues in this case, and they ask the Court to stay the proceedings to await that ruling.

The Court is not persuaded that a stay of proceedings is appropriate at this stage of the case, because the defendants’ motion merely offers their speculation about what might occur based on a hypothetical course of future action. There has been no petition for *certiorari* filed in the *Hall* case, and it is unclear what action the Supreme Court would take in response to such a petition, if one is filed. Upsetting the progress of this litigation, if the Court were to adopt the magistrate judge’s recommendation, would not be prudent. The Court might entertain a renewed motion to stay if a petition is filed and the Supreme Court grants *certiorari* in the *Hall* case.

Accordingly, it is **ORDERED** that the defendants' motion to stay (ECF No. 65) is **DENIED** without prejudice.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: February 9, 2023

CERTIFICATE OF SERVICE

Scott F. Smith certifies that on February 9, 2023, he served the Plaintiff's Motion for Leave to File Supplemental Exhibit on all parties and attorneys of record through the ECF/Pacer system.

Respectfully submitted,
Smith Law Group, PLLC

/s/ Scott F. Smith (P28472)
By: SCOTT F. SMITH (P28472)
Attorney for Plaintiffs
30833 Northwestern Hwy., Suite 200
Farmington Hills, MI 48334
(248)626-1962
Smithsf.law@gmail.com